IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/10/2003

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THE HONOURABLE MR.JUSTICE C.NAGAPPAN

Application No.907 of 2002
in
Application No.1194 of 2001
in
C.S.No.300 of 2001

M/s.Dhandapani Cements (P) Ltd.,
69, Ganapathy Nagar,
Thiruvanaikoil,
Tiruchirapalli-620 005. .. Applicant

-Vs-

M/s.Binny Engineering Ltd.,
65, Armenian Street,
Chennai-600 001. .. Respondent

!For applicant : Mr.M.S.Sampath
for M/s.T.K.Seshadri

For respondent : Mrs.K.Bhavadharini.

:ORDER

The applicant has sought for revocation of the leave granted by this Court on 14.3.2001 in Application No.1194 of 2001 to institute the suit against the applicant. 2. The applicant is the defendant in the suit and the respondent/ plaintiff filed the suit for recovery of a sum of an amount of Rs.16 ,97 ,166.00, alleged to be due on contract and it obtained leave of this Court to sue the applicant company by filing Application No.1194 of 2 001 and the same was ordered on 14.3.2001, pursuant to which, the suit was taken on file. According to the applicant, the respondent/ plaintiff has claimed in the affidavit filed in support of the leave application that the counter offer of the applicant company was accepted by the respondent company at its Head Office at Chennai and thus cause of action for the suit arose at Chennai. It is stated by the applicant that there was no counter offer made by the applicant and the respondent company has misrepresented the whole matter in the affidavit. According to the applicant company, it is manufacturing cement and the respondent company is engaged in the manufacture and erection of cement plants and in and around September, 1997 the applicant company made enquiries for erection of new cement plant and the respondent company, on

17.9.1997, offered the applicant to supply the plant for a price of Rs.31,86,000/- and the offer was sent by post by the respondent company to the applicant at Tiruchirapalli and subsequently, after discussions at Tiruchirapalli, the price was settled at Rs.28,1 7 ,000/- and the offer was accepted by the applicant at Tiruchirapalli and the contract was made there and the plaint documents filed by the plaintiff would themselves prove the above fact. It is further stated by the applicant that leave to sue has been granted only due to the false averment in the affidavit that the contract has been accepted at Chennai and hence the leave is liable to be revoked. 3. A counter has been filed by the respondent stating that the plaintiff company submitted its offer on 17.9.1997 and a revised offer was made on 20.9.1997 offering to supply the Mill for Rs.34,20,000/- and the defendant, instead of accepting the offer, made a counter offer requesting the plaintiff to supply the Mill for Rs.28,17,000/- and the plaintiff accepted the offer by its letter dated 22.9.1997 and the contract came into existence at the registered office of the plaintiff company, that is, within the jurisdiction of this Court and the plaintiff's documents would prove the same. The respondent has further stated that the contract has been entered into at Chennai and the substantial part of cause of action has been arisen at Chennai, within the jurisdiction of this Court and the present application is not bonafide and liable to be dismissed. 4. The respondent/plaintiff company is engaged in the manufacture and erection of cement plants and on 17.9.1997, it offered to supply the plant to the applicant/defendant company for a sum of Rs.31,86,0 0 0/-. The offer was made by letter of the respondent company to the applicant company at Trichirapalli. Pursuant to the offer, discussions between the Manager of the plaintiff company and the applicant took place at the factory of the applicant at Tiruchirapalli and the price was settled at Rs.28,17,000/and there itself, the applicant paid an advance of Rs.7 lakhs by cheque dated 21.9.1997 to the Manager of the plaintiff company and this is confirmed in the letter of the plaintiff, dated 22.9.1997, filed as plaint document No.3. The applicant/defendant, in its letter dated 24.9.1997, which is filed as plaint document No.4, enclosed a Demand Draft for Rs.7 lakhs towards the advance and sought for the return of cheque given to the plaintiff on 21.9.1997. 5. The learned counsel for the applicant Mr.Sampath contends that the offer of the respondent/plaintiff was accepted by the applicant/ defendant company at Trichirapalli and the contract was made at Trichirapalli and Trichirapalli is the place of making of the contract and no part of the cause of action arose within the original side jurisdiction of this Court and the grant of leave was mainly based on misrepresentation of facts and hence the leave is liable to be revoked. In this regard, the learned counsel relied on the following decisions. "1) Arthur Butler and Co. Ltd v. District Board of Gaya (A.I.R. (34) 1947 Patna) (Head Notes 'd'). The Patna High Court held thus. It is not every step taken in the completion of a contract that determines the jurisdiction of a Court to entertain a suit based on the contract. The mere making of an offer is not a part of the cause of action for a suit based on a contract and the suit cannot be brought at the place where the offer originated when the offer was accepted within the jurisdiction of another Court. 2) Baroda Oil Cakes Traders v. Parshottam Narayandas Bagulia and another (A.I.R.1954 Bombay 491) (Head Notes 'd'). The Bombay High Court held as follows. No part of the cause of action arose in Baroda though the plaintiff had sent his offer from Baroda by telegram and though he

received the acceptance from the defendants by telegram at Baroda. In the eyes of law the offer was made at Kanpur and the acceptance was likewise made at Kanpur, with the result that the whole of the contract was made at Kanpur. Consequently, the Baroda Court had no jurisdiction to entertain the suit. 3) G.Venkatesha Bhat and others v. M.s.Kamlapat Motilal and others (AIR 1957 MADRAS 201). This Court laid down thus. The making of the contract itself is part of the cause of action and the determination of the place where the contract was made is part of the law of contract. A contract is made when an offer of one party is accepted by the other party. An offer, however, must be distinguished from an invitation to offer. Where the parties personally meet at any place and the proposal of one is accepted by the other, that place will naturally be the place of making the contract. But if the proposal and acceptance thereof are made in different places, the place of acceptance will be the place where the contract is made." It is settled law that for the purpose of jurisdiction to entertain the suit based on a contract, the place of acceptance is the place of making the contract and that gives rise to the cause of action.

6. The learned counsel for the respondent contended that the registered office of the plaintiff is at Chennai and hence a part of the cause of action arises at Chennai, within the jurisdiction of this Court. The cement division of the plaintiff company is situated at Meenambakkam away from Chennai and the discussion was held at the factory of the applicant/defendant in Trichirapalli where the revised offer was made and accepted leading to the applicant handing over of the advance of Rs.7 lakhs by cheque to the Manager of the plaintiff company there itself. Thus, it is Trichirapalli, where the whole of the contract was made. 7. There is no question of any counter offer made by the defendant as alleged by the plaintiff in its application seeking for leave to sue. Offers and revised offers were made only by the plaintiff for the supply of the plant to the defendant and the averment of the plaintiff in the affidavit as well as in the plaint that a counter offer made by the defendant was accepted at Chennai is false. 8. In a suit on contract, the making of the contract itself is a part of the cause of action for filing the suit. As already seen, in this suit, the whole of the contract was made only at Trichirapalli and no cause of action or part of it arose within the jurisdiction of this Court and the leave granted has to be revoked. The applicant is entitled for the prayer sought for in this application. 9. The application is ordered as prayed for. The plaint is returned for presentation before the proper Court and time for presentation is four weeks from the date of return.

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Index: Yes.

Internet: Yes